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U.S. DISTRICT COURT
MIDDLE DISTRICT OF TN

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

PLANNED PARENTHOOD
GREATER MEMPHIS REGION and
PLANNED PARENTHOOD OF MIDDLE
AND EAST TENNESSEE,

Plaintiffs,

vs.

JOHN J. DREYZEHNER, Commissioner,
Tennessee Department of Health,

Defendant.

Case No.:

COMPLAINT

Plaintiffs, Planned Parenthood Greater Memphis Region ("PPGMR") and Planned Parenthood of Middle and East Tennessee ("PPMET"), for their Complaint against the Defendant, John J. Dreyzehner, Commissioner, Tennessee Department of Health ("TDOH"), state as follows:

I. NATURE OF THE ACTION

1. Plaintiffs file this action pursuant to 42 U.S.C. § 1983 to vindicate rights secured by the First and Fourteenth Amendments to the United States Constitution. For more than three-quarters of a century, Planned Parenthood has been an integral provider of reproductive health services to the women, men, and teens of Tennessee, including providing education and testing to prevent the spread of sexually transmitted diseases ("STDs"). For more than a decade, Plaintiffs have been awarded grants funded by the federal Centers for Disease Control and Prevention ("CDC") through the TDOH for its HIV Prevention program. More recently,

PPGMR was selected to receive federal CDC funds in 2011 and 2012 for TDOH's Syphilis Elimination program.

2. Despite having a proven track record in these programs and having been selected to receive these funds for the 2012 calendar year through a competitive bidding process, Plaintiffs were informed approximately one month ago that TDOH was "unable to approve" them for this funding. On information and belief, Plaintiffs are the only service providers selected to participate in these programs that were not approved; TDOH took this action without actually substantively reviewing Plaintiffs' or any other grant proposals; and TDOH's decision was motivated solely by animus toward their constitutionally protected, privately funded activities — specifically, that Plaintiffs provide, associate with, and/or advocate for access to abortion, even though Plaintiffs conduct these activities outside of any state or federal program. Moreover, the Defendant has impermissibly singled out Plaintiffs among similarly situated service providers for disparate treatment.

3. Plaintiffs seek a judgment declaring that these actions violate their rights under the First and Fourteenth Amendments. As these actions, if allowed to stand, will imminently and irreparably harm Plaintiffs and thousands of Tennessee women, men, and teens who rely on them for education and testing to prevent contracting and transmitting life-threatening HIV and syphilis infections, Plaintiffs seek appropriate injunctive relief.

II. JURISDICTION AND VENUE

4. Jurisdiction is conferred on this Court by 28 U.S.C. § 1331.

5. Plaintiffs' claim for declaratory and injunctive relief is authorized by 28 U.S.C. §§ 2201 and 2202 and by Rules 57 and 65 of the Federal Rules of Civil Procedure, and by the general legal and equitable powers of this Court.

6. Venue is proper under 28 U.S.C. § 1391(b) because a substantial portion of the events giving rise to the claims occurred in this district and Defendant resides in this district.

III. THE PARTIES

7. Plaintiff Planned Parenthood Greater Memphis Region is one of the oldest and largest private, nonprofit health care agencies in Tennessee. PPGMR's mission is to ensure broad public access to reproductive and related health care through health center services, education, advocacy, and community partnerships. PPGMR provides confidential health services to all individuals regardless of their ability to pay. Last year, PPGMR provided more than 23,000 unique patient services, including well-woman exams, birth control, cancer screenings, and tests for HIV and other STDs. In addition, PPGMR's educators provided comprehensive, age-appropriate sexuality education to 3,608 individuals and reached more than 30,000 people through community events and health fairs; an additional 741 were counseled in outreach on risk of pregnancy, HIV, and other STDs.

8. Plaintiff Planned Parenthood of Middle and East Tennessee is a private, nonprofit organization whose mission is to provide access to reproductive, sexual, and complementary health care services and information in settings that preserve and protect the right to privacy; provide educational programs that enhance understanding of human sexuality; and advocate for public policies that guarantee these rights and ensure access to these services. PPMET provides a broad range of reproductive health care services, with more than 15,000 visits annually to its health centers located in Nashville, Knoxville, and Johnson City. PPMET also reaches more than 11,000 individuals annually through its education programs, which provide youth and adults with thorough, accurate information about their bodies and the skills to maintain their physical health and to develop healthy relationships.

9. Plaintiffs bring this action on behalf of themselves and their patients.

10. Defendant John Dreyzehner is the Commissioner of the Tennessee Department of Health. TDOH receives the funds at issue in this litigation from the federal government and retains final approval over the service providers selected to participate in the HIV Prevention and Syphilis Elimination programs. Therefore, on information and belief, Commissioner Dreyzehner is a government official responsible for the acts complained of in this litigation. He is sued in his official capacity.

IV. THE PROGRAMS AT ISSUE IN THIS CASE AND PLAINTIFFS' PARTICIPATION IN THEM

11. The U.S. Centers for Disease Control and Prevention, pursuant to 42 U.S.C. § 247c, provides project grants to States to prevent and control sexually transmitted infections. Tennessee receives this funding, and with it TDOH has established a program to provide HIV Prevention services to members of communities and other groups in which there may be a high risk for acquiring or transmitting HIV infection. TDOH also utilizes this funding for its Syphilis Elimination program. The programs include funding for testing, education, and outreach.

A. HIV Prevention Program

12. For the HIV Prevention program, TDOH provides funding to five Regional Community Planning Groups ("RCPGs"). Each RCPG has a Lead Agency that serves as its fiscal agent. The responsibilities of the Lead Agency include receiving and disbursing the funds from the State, establishing a subcontract with HIV Prevention providers approved by the RCPG, and implementing a subcontractor invoice and monitoring system. The Lead Agency for Middle Tennessee is the United Way of Metropolitan Nashville ("UW Nashville"). The Lead Agency

for Southwest Tennessee, which includes the Memphis region, is the United Way of the Mid-South ("UW Mid-South").

13. Grant monies are allocated by the RCPGs through a rigorous competitive bidding process. Each Lead Agency issues a Request for Proposals, and organizations applying for funds must submit detailed proposals to an RCPG subcommittee composed of members not affiliated with any agency requesting funds. Proposals are substantively reviewed and scored by this committee. The Lead Agency also checks the proposals to ensure that no improprieties or mistakes have occurred. Ultimately, the Lead Agency notifies grantees of their award amounts and executes contracts for the relevant services. The State has final approval over all grants, and funding is allocated to approved agencies for the following calendar year.

14. PPGMR has historically been one of eight grantees for the Southwest Tennessee region and has been awarded HIV Prevention funding for more than ten consecutive years. These grant funds have been used to provide group- and individual-level education and counseling, HIV testing, and professional development for local community-based organizations, such as peer educator training for high school and college students. In 2011, PPGMR received \$70,000 in CDC-funded HIV Prevention funds. With those funds, it tested more than 3,800 individuals for HIV at five locations, offering business- and after-hours services. The same year, it provided HIV prevention services at thirteen locations to nearly 8,000 individuals, and offered professional development at fifteen locations.

15. Between 2007 and 2011, PPGMR was evaluated at least four times during site visits by officials from TDOH with respect to its participation in the HIV Prevention program. In follow-up letters sent after these visits, TDOH officials stated that they did not have any formal recommendations for improvement. Following a June 2011 site visit, TDOH's HIV

Prevention Testing Program Director commended PPGMR's "dedication to HIV prevention and the community" and stated that he "look[ed] forward to working with Planned Parenthood in the future."

16. PPMET has participated in TDOH's HIV Prevention program, through contracts with UW Nashville, since 1997. PPMET historically has been one of three grantees for the Middle Tennessee region. It has used these funds to provide: educational workshops in community-based settings, the local juvenile detention center, and the local teen shelter; outreach at health fairs, concerts, and other venues attended by teens; and peer education efforts. PPMET tailors its education efforts to at-risk communities, particularly to the high-risk youth community. This is particularly important because new HIV infections among 15 to 24 year olds in Tennessee have more than doubled in the past five years. For 2011, PPMET won \$41,500 in funds based on a proposal to serve 1,250 people; it actually served more than 2,300 people with those funds.

17. In 2010 and 2011, PPMET's HIV program was evaluated at least six times during site visits by officials from UW Nashville. During none of these visits was any "program finding" (i.e., unfavorable observation) identified. In December 2010, TDOH also evaluated the program. In a follow-up letter, the Director of Education and Community Affairs for the HIV/AIDS/STD Prevention Services Division stated that she did not have any recommendations for improvement.

B. Syphilis Elimination Program

18. UW Mid-South issued a request for proposals in July 2011 for the Syphilis Elimination program for Shelby County, where Memphis is located, for a grant cycle that was to run from January 1, 2011, through December 31, 2012. Grant monies were allocated through a

competitive bidding process in which organizations applying for funds submitted proposals according to a detailed set of guidelines. Proposals were substantively reviewed by a committee, and United Way staff also checked the proposals to ensure that no improprieties or mistakes had occurred. UW Mid-South submitted the selected agencies to TDOH, which had final approval, and service providers entered into contracts with United Way on a calendar-year basis.

19. PPGMR submitted its response to UW Mid-South's request for proposal for 2011-2012 Syphilis Elimination grant funds *in response to a request from the State*. In 2011, a TDOH representative approached PPGMR, noting that of various organizations that might be able to provide the needed services, PPGMR is the only one whose network of community partners includes the Memphis Gay and Lesbian Community Center. This is important because over the past several years, increases in syphilis among homosexual men have been reported, along with high rates of HIV co-infection.

20. In its proposal, PPGMR explained how it intended to perform its proposed project, identified the number of community members who would receive services, outlined the services it would provide at its main location and through outreach, and described how its Syphilis Elimination program would build on the network and resources established under its successful HIV Prevention program.

21. By letter dated August 25, 2011, UW Mid-South informed PPGMR on behalf of the TDOH that it had been approved for 2011 and 2012 Syphilis Elimination funding. UW Mid-South and PPGMR subsequently executed a contract for funding from October 1, 2011, through December 31, 2011, for \$32,000, with an renewal option for the 2012 calendar year. In 2011, PPGMR was one of three Syphilis Elimination grantees in Shelby County.

22. While PPMET and PPGMR provide abortion services with their private funds, the CDC funds used for the HIV Prevention and Syphilis Elimination programs cannot be and are not used by Plaintiffs to provide abortion services. During the many years in which PPGMR and PPMET have received HIV Prevention funds and the short time that PPGMR received the Syphilis Elimination funds, there have never been any allegations that either of them failed to provide the services required under its contracts. Nor has either organization ever misused these funds by allocating such funds for abortion services or otherwise.

V. THE 2012 CONTRACT YEAR AND THE DEFUNDING OF PLANNED PARENTHOOD

A. Plaintiffs' 2012 Grant Awards

23. The 2012 HIV Prevention request for proposal for the Southwest Tennessee RCPG was issued by UW Mid-South on May 27, 2011. PPGMR submitted a 29-page proposal on June 29, 2011. In its application, PPGMR explained how it intended to perform its proposed project, identified the number of community members who would receive services, outlined substantial program accomplishments during 2011, and described the qualifications and experience of its program staff.

24. By letter dated August 12, 2011, UW Mid-South notified PPGMR on behalf of TDOH that it had been approved for 2012 HIV Prevention funding in the amount of \$73,000.

25. In addition, based on the award it had been given in August 24, 2011, PPGMR anticipated that it would receive \$55,000 in 2012 Syphilis Elimination funds, which it planned to use to provide syphilis testing and education to Tennessee residents.

26. On December 29, 2011, PPGMR received electronic mail from UW Mid-South, informing it that TDOH had not approved it as a subcontractor of HIV Prevention services for the 2012 program year. The email attached a letter dated December 28, 2011, from TDOH to

UW Mid-South, stating without explanation that the State was “unable to approve Planned Parenthood Greater Memphis Region as a subcontractor.” Upon information and belief, PPGMR was UW Mid-South’s only HIV Prevention subcontractor that was not approved for 2012. PPGMR was later informed by telephone that TDOH had also denied approval for its 2012 participation in the CDC-funded Syphilis Elimination program. The TDOH official with whom PPGMR spoke also indicated that Planned Parenthood would not be approved for other grant funding for which it might apply in the future.

27. The 2012 HIV Prevention Request for Proposal for the Middle Tennessee RCPG was issued by UW Nashville on May 27, 2011. PPMET submitted a 41-page proposal dated June 20, 2011. In its application, PPMET described its history with the program, its proposed prevention activities, and its particular expertise in working with teens.

28. On August 24, 2011, UW Nashville notified PPMET that it had been approved for 2012 HIV Prevention funding in the requested amount of \$41,500 during calendar year 2012 “as approved by the Tennessee Department of Health, HIV/AIDS/STD Section, HIV Prevention Section.” The parties executed a contract for the relevant services in September 2011. These funds were to be used to provide HIV Prevention services to an estimated 1,100 people.

29. On January 9, 2012, after the 2012 grant funding was to begin, UW Nashville formally notified PPMET by letter — also without explanation — that TDOH was unable to approve it as an HIV Prevention provider. During a follow-up phone call with PPMET, a TDOH representative indicated that PPMET was unlikely to receive grant funds during Defendant’s tenure as Commissioner.

30. In correspondence with PPGMR, a TDOH official stated that “[a]ll other contracts for HIV prevention were allowed to continue across the state, except for the two Planned

Parenthood subcontracts,” and observed, “I do not believe that experience and skill factored into the decision, as this information was not included as part of the contract that was sent for [C]ommissioner approval.”

B. TDOH’s Animus Toward Plaintiffs’ Constitutionally Protected Conduct

31. At no time has TDOH offered either Plaintiff any rationale for the termination of its contracts. Upon information and belief, none of the other subcontractors with either UW Mid-South or UW Nashville provides or advocates for access to abortion services, or is affiliated with an organization that does so.

32. Although TDOH has not offered an explanation for the termination of these funds, in 2011 numerous elected officials in Tennessee expressed their desire to eliminate non-abortion funding to Planned Parenthood due to its performance of, advocacy for access to, and/or association with abortion. In May 2011, an amendment to an appropriations bill (Section 78 to HB 2139) was offered by Senator Stacey Campfield that attempted to limit use of federal family-planning funds (from the “Title X” program) to government health agencies and exclude third-party providers or private organizations like Planned Parenthood. Upon passage of the budget bill for fiscal year 2012, Senator Campfield declared victory against Planned Parenthood, stating: “We had to kiss a lot of ugly girls at the prom, but we took the pretty one home [W]e got what I was looking for, which was defunding Planned Parenthood”¹ However, due to a later amendment in the same bill, government agencies were permitted to subcontract their Title X funds to private entities.

¹ Tom Humphrey, *With Planned Parenthood Defunded (Except Maybe in Memphis?)*, *Lawmakers Ready to Ignore Mystery Amendment*, KNOXNEWS.COM, June 12, 2011, available at <http://blogs.knoxnews.com/umphrey/2011/06/with-planned-parenthood-defund.html>.

33. On June 10, 2011, Lieutenant Governor Ron Ramsey issued a press release praising “the work of Gov. Bill Haslam and the Tennessee Department of Health for moving to administratively defund Planned Parenthood.”² The press release, which asserted that “Planned Parenthood is the largest abortion provider in the country,” stated that Davidson County was ending its Title X contract with PPMET, and Shelby County was also expected to begin transitioning out of its Title X contract with PPGMR, which it did. Lieutenant Governor Ramsey stated: “It has always been the ambition of Republicans in the legislature to defund this organization. I was proud to lead the charge to turn over family planning services to the county health departments effectively defunding the organization in 93 out of 95 counties. I’d like to praise the Governor for working to completely turn off the spigot of taxpayer funds to Planned Parenthood.”³

34. Tennessee is not alone in this effort. The defunding of PPGMR and PPMET occurs in the context of a national campaign to defund Planned Parenthood due to its association with and/or provision of abortion services. On February 17, 2011, United States Representative Mike Pence proposed a rider to a federal appropriations bill that singled out Planned Parenthood and would have barred it and 102 putative affiliates from receiving federal funds for any purpose. Representative Pence argued this was necessary because Planned Parenthood “provide[s] and promote[s] abortion.”⁴

² *Lt. Governor Ramsey Praises Governor Haslam for Move to Defund Planned Parenthood*, June 10, 2011, available at <http://ltgov.tn.gov/2011/06/lt-governor-ramsey-praises-governor-haslam-for-move-to-defund-planned-parenthood/>.

³ *Id.*

⁴ 157 Cong. Rec. H1156 (daily ed. Feb. 17, 2011) (statement of Rep. Pence).

35. Following the defeat of the Pence Amendment, various states took up the cause of prohibiting Planned Parenthood or abortion providers generally from receiving government funds unconnected to abortion services. In addition to Tennessee, to date Kansas, Indiana, New Hampshire, North Carolina, Texas, and Wisconsin have taken action aimed at partially or fully defunding abortion providers and/or Planned Parenthood specifically. In each instance, lawmakers were focused on Planned Parenthood's advocacy for abortion rights and association with abortion services, even though federal law already prohibits government funding of abortion.

36. Based on this history and the excellent track records of both PPGMR and PPMET in the HIV Prevention program, it is obvious that Defendant's decision to deny Plaintiffs federal grant funding for STD testing and prevention services was motivated not by any substantive concern with Plaintiffs' ability to perform program services, but rather, on information and belief, because of Planned Parenthood's association with, advocacy for access to, and/or provision of abortion services.

VI. THE IMPACT OF DEFUNDING ON PLAINTIFFS AND THEIR PATIENTS

37. Plaintiffs, their patients, and thousands of Tennessee women, men, and teens will be injured by Plaintiffs' loss of these federal grant funds, which total nearly \$150,000. This loss is exacerbated by the Defendant's abrupt decision, which came without warning within days of the start of the new calendar and 2012 grant year.

38. As a result of the loss of these funds, Plaintiffs will be required to cut back on certain HIV and syphilis treatment, prevention, and education programs, and to eliminate others altogether. In some cases, Plaintiffs will be forced to begin charging patients for certain programs and services, which will necessarily decrease the availability of such programs and

services to low-income patients and the community. Plaintiff PPMET may also have to restructure program staffing and potentially cut one or more positions.

39. UW Mid-South and UW Nashville do not have another provider at this time to provide the services it planned that Plaintiffs would already be providing this year. Nor is there any indication that a provider with similar experience and expertise will be able to provide those services any time soon. For example, PPGMR was the first organization in Memphis to begin rapid testing for HIV, and its HIV “Master Trainers” train more new HIV testers every year than any other agency in the area. PPMET’s Education and Training department provides STD prevention education through relationships with more than 100 organizations and is a primary source of training for professionals who educate youth on STD prevention and other issues.

40. Because the federal monies at issue fund critical education and testing services for men, women, and teens, the decrease in access to these services will likely result in a decrease in detection of these life-threatening diseases as well as an increase in transmission rates.

41. Plaintiffs and their patients have no adequate remedy at law.

CLAIMS FOR RELIEF

COUNT I — UNCONSTITUTIONAL PENALTY ON CONSTITUTIONALLY PROTECTED ACTIVITY — First Amendment

42. Plaintiffs hereby reaffirm and reallege each and every allegation made in ¶¶ 1-41 above as if set forth fully herein.

43. The Defendant’s action violates the rights of Plaintiffs as guaranteed by the First Amendment to the United States Constitution by imposing a penalty on their association with providers of abortion services and/or their advocacy for access to abortion services.

**COUNT II — UNCONSTITUTIONAL PENALTY ON
CONSTITUTIONALLY PROTECTED ACTIVITY — Fourteenth Amendment**

44. Plaintiffs hereby reaffirm and reallege each and every allegation made in ¶¶ 1-43 above as if set forth fully herein.

45. The Defendant's action violates the rights of Plaintiffs and Plaintiffs' patients as guaranteed by the Fourteenth Amendment to the United States Constitution to provide and access abortion services by imposing a penalty on the provision of and/or association with abortion services.

COUNT III—VIOLATION OF EQUAL PROTECTION—Fourteenth Amendment

46. Plaintiffs hereby reaffirm and reallege each and every allegation made in ¶¶ 1-45 above as if set forth fully herein.

47. Defendant's action, by singling out Plaintiffs and their patients for treatment disparate from that accorded to other providers in the HIV Prevention and Syphilis Elimination programs, violates their rights as guaranteed by the equal protection clause of the Fourteenth Amendment to the United States Constitution.

WHEREFORE, Plaintiffs request that this Court:

1. Issue a declaratory judgment that Defendant's action violates the rights of Plaintiffs protected by the First Amendment to the United States Constitution;
2. Issue a declaratory judgment that Defendant's action violates the rights of Plaintiffs and Plaintiffs' patients protected by the Fourteenth Amendment to the United States Constitution;
3. Issue preliminary and permanent injunctive relief, without bond, enjoining Defendant, his agents, employees, or successors from continuing to disqualify Plaintiffs from

receiving grants and from continuing to block United Way from fulfilling its agreements with Plaintiffs;

4. Grant Plaintiffs' attorneys' fees, costs, and expenses pursuant to 42 U.S.C. § 1988; and
5. Grant such further relief as this Court deems just and proper.

Dated: February 2, 2012

Respectfully submitted,



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**Application for admission pro hac vice
forthcoming*